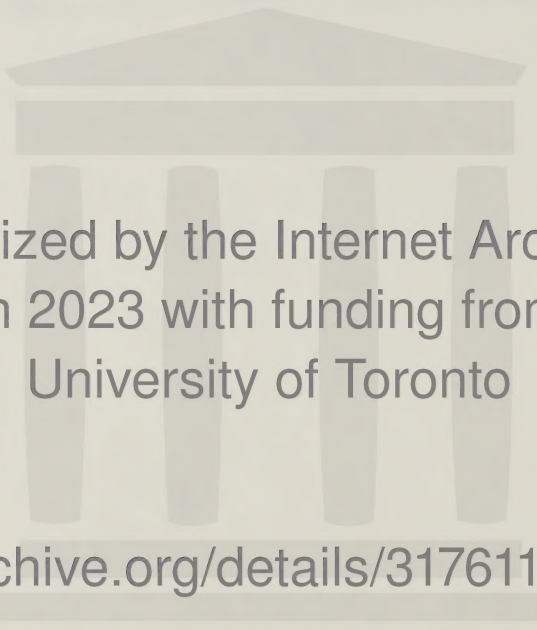




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HUMAN RIGHTS IN CANADA

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FAIR EMPLOYMENT PRACTICES BRANCH

CANADA DEPARTMENT OF LABOUR

In 1964, Canada became the 50th country to ratify an international treaty which has now become a pillar of fundamental social justice: the International Labour Convention Concerning Discrimination in respect of Employment and Occupation (Convention 111). By so doing, the Government of Canada assumed an obligation to "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view of eliminating any discrimination in respect thereof".

*A Concise Review of Canadian Legislation
Concerning Discrimination in Employment,
Trade Union Membership, Public Accommodation,
Hiring Practices, Collective Agreements, etc.*

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BACKGROUND

Discrimination has been described as an unequal and unfavourable treatment either by denying rights or advantages to a member or members of a particular group; or by imposing special burdens on them; or by granting favours exclusively to members of a special group, thus creating inequality between those who belong to a privileged group and those who do not.

Discrimination manifests itself through harmful behaviour, either positive or negative, toward a person or persons belonging to a particular group for the sole reason that they belong to that particular group.

In Canada the bases frequently taken as grounds for discrimination are race, national origin (which includes nationality and ancestry), colour or religion. In addition, there are certain laws which, in certain circumstances, forbid discrimination on the grounds of political activity or sex. Further bases have been used in other countries including social origin, caste, social status and the like. However, these have little meaning in a Canadian context although they may have much meaning in some

other countries with a different historical and social background. The point which is emphasized now is that discrimination is not merely a subjective attitude, but is conduct outwardly manifested.

Discriminatory acts, however, originate 'from within'—that is from prejudice, which creates an unhealthy and unfavourable attitude of mind. Generally speaking, it is much easier to attack discrimination directly than to attempt to wipe out prejudice. Discrimination can be prevented or suppressed by legal measures. Prejudice cannot be attacked in the same way.

While it is true that prejudice breeds discrimination, it is also true that discriminatory practices may breed prejudice, since such practices may act as a medium of indoctrination. Discrimination may also exist without prejudice when it is based only on desire for exploitation. Generally speaking, however, there is a mutual inter-relationship between prejudice and discrimination. Prejudice can be attacked only through the educational process—discrimination can be attacked through law—

law being in itself an educational measure.

The Canadian Government and most of the Provinces have enacted positive anti-discrimination legislation aimed at "equal opportunity in employment regardless of race, colour, religion or national origin". Although it may not be possible to completely eradicate discrimination by law, or prejudice by education, many forms of discriminatory conduct and many forms of prejudice may be suppressed or greatly lessened by legal measures or the educational process.

The more discrimination is practiced, the more some people will look upon it as acceptable. The more discrimination is checked by law, the less respectable it becomes.

Though Canada has a heritage of human rights and fundamental freedoms, specific laws against discrimination are all relatively new. The real impetus behind legislation occurred with the 1948 Universal Declaration of Human Rights, which was proclaimed as "a common standard of achievement for all peoples and nations". In 1953, Parliament passed the Canada Fair Employment Practices Act, and eleven years later Canada ratified the International Labour Convention concerning discrimination in employment.

In addition, federal and provincial governments have actively promoted educational programs designed to oppose prejudice with its greatest enemy—knowledge.

ANTI-DISCRIMINATION LAWS

Nine years prior to the passing of the federal Fair Employment Practices Act, *Ontario* enacted the *Racial Discrimination Act*, which made it an offence to display or publish any notice, sign, symbol or other representation expressing racial or religious discrimination.

In 1947, *Saskatchewan* passed a *Bill of Rights Act* laying down certain civil rights to be enjoyed by all people regardless of race, creed, colour, religion or ethnic or national origin. These included the right to obtain and retain employment.

Between 1950 and 1960 *Parliament* and six provincial legislatures passed *Fair Employment Practices Acts*: *British Columbia*, *Manitoba*, *New Brunswick*, *Nova Scotia*, *Ontario* and *Saskatchewan*. During the same period *Parliament* and these same provinces, together with *Alberta* and *Prince Edward Island*, passed legislation *prohibiting lower rates of pay for women* doing the same work as men.

The *Canadian Bill of Rights*, a federal Act of *Parliament*, was passed in 1960. It recognizes individual

rights and freedoms, including the right to employment without regard to race, national origin, colour, religion or sex.

In 1962 *Ontario* codified its existing anti-discrimination legislation in the areas of employment, public accommodation and multiple dwellings into the *Ontario Human Rights Code*. The following year, *Nova Scotia* also codified its *anti-discrimination* legislation.

Acts governing employment in the federal, *Nova Scotia* and *Prince Edward Island* Civil Services include anti-discrimination clauses. The Fair Employment Practices legislation applies to the provincial government in the case of *Alberta*, *Manitoba*, *New Brunswick*, *Ontario*, *Quebec* and *Saskatchewan*.

Two provinces, *British Columbia* and *Ontario*, have enacted legislation banning *employment discrimination on the grounds of age*; the legislation is designed to provide equality of opportunity for capable older workers (those aged from 45 in *British Columbia* and from 40 in *Ontario*) who are denied work because of their age.

In 1966, *Alberta* passed a *Human Rights Act* which forbids discrimination in employment, union membership, employment advertising and public accommodation.

Quebec passed similar legislation in 1964. This additionally prohibited *discrimination on the grounds of sex*.

Territorial Fair Practices Ordinances (The *Yukon* in 1963 and the *Northwest Territories* in 1966) prohibit discrimination in employment, in trade union membership, and in public accommodation and multiple housing on grounds of race, colour, religion or national origin. The N.W.T. Ordinance also contains an equal pay clause for female employees.

In the administration of these laws, penalties are generally invoked only as a last resort, and only after

discussion, conciliation and persuasion have failed. Most of these laws carry penalties of a fine not exceeding \$100 for an individual, and not exceeding \$500 for a corporation, trade union or other organization.

(A list of all Federal and Provincial Acts bearing on anti-discrimination appears at the back of this publication.)

A result of these laws is that nearly all Canadians have some legal protection against discrimination in employment. Complementing these laws was the ratification by the Government of Canada in 1964 of the previously-mentioned International Labour Convention designed to promote equality of opportunity in employment on a national scale.

FAIR EMPLOYMENT PRACTICES LAWS

Fair Employment Practices Acts prohibiting discrimination in hiring, conditions of employment and in trade union membership are in effect in nine jurisdictions. The federal Canada Fair Employment Practices Act, passed in 1953, applies to employers and unions in businesses, undertakings and industries within the legislative jurisdiction of the Parliament of Canada. This includes railways, airlines, banks, broadcasting and telegraphs and other undertakings of an interprovincial or international character. Some 600,000 employees are covered by its provisions. The Act does not, however, cover employers with fewer than five employees, or non-profit charitable, philanthropic, educational, fraternal, religious or social organizations or organizations operated primarily to foster the welfare of a religious or racial group.

Neither does the Act apply to employees of the Federal Government itself (except Crown Corporations); but the Public Service Commission adheres to an official policy of non-discrimination in hiring and promotion (Section 12 of the Public Service Employment Act prohibits discrimination by reason of sex,

race, national origin, colour or religion).

The FEP Act lays down that no employer can refuse to employ, continue to employ, or otherwise discriminate against any person in regard to employment (or any term or condition of employment) because of his race, national origin, colour or religion. Further, an employer cannot use an employment agency which practices discrimination. Employers must not make written or oral inquiries, or use application forms, which express directly or indirectly any limitation, specification or preference based on race, national origin, colour or religion, except where based on a bona fide occupational qualification. There are similar provisions against discriminatory advertising.

The Act also forbids discriminatory action by trade unions; no union can exclude from membership, expel, suspend or otherwise discriminate against anyone in regard to his employment because of race, colour, national origin or religion.

Anyone who feels he has been discriminated against may make a written complaint to the Director of the

Fair Employment Practices Branch, Canada Department of Labour, Ottawa. An informal inquiry may then be made. If a satisfactory settlement by conciliation cannot be reached, an Industrial Inquiry Commission can be constituted, to report to the Minister of Labour. Thereafter the Minister may put into effect any recommendation of the Commission, which will be final and binding, and may order prosecution.

A person making a complaint is protected from retaliatory action, and there is similar protection for anyone who assisted in the initiation or prosecution of the

complaint.

In addition to fines which may be imposed under the Act, compensation as well as any lost wages may also be payable to the complainant. The court may also order reinstatement of the employee.

Each of the eight provincial FEP Acts applies to employers and unions within the boundaries of the province who are not within federal jurisdiction. All are fundamentally akin to the federal law, providing similar protection and similar penalties.

GOVERNMENT CONTRACTS

Employees in businesses or industries carrying out federal government contracts in construction or manufacturing are protected by the Federal Fair Wages and Hours of Labour Act and the Fair Wages Policy. All such

contracts prohibit the employer from discriminating in his employment practices. A large notice containing this Non-Discrimination Provision is posted at every contract site. Disregard of this Provision constitutes breach of contract.

EMPLOYMENT AGENCIES

Canada's national employment agency—the "Canada Manpower Centres", formerly known as the National Employment Service—follows a strict policy of non-discrimination, a policy originally established by a 1952 amendment to the Unemployment Insurance Act under which the N.E.S. operated before the formation of the Department of Manpower and Immigration: "in referring a worker seeking employment, (must ensure) there is no discrimination because of race, national origin, colour, religion or political affiliation". The section goes on to state: "... but nothing in this paragraph shall be construed to prohibit the (centres) from giving

effect to any limitation, specification or preference based upon a bona fide occupational qualification".

In addition, all the various federal and provincial Acts prohibit discrimination by private employment agencies; in 1964 the Ontario Human Rights Commission and the Association of Professional Placement Agencies and Consultants signed a declaration pledging their joint co-operation for "the advancement of full and equal employment opportunity for all qualified workers irrespective of race, creed, colour, nationality, ancestry or place of origin".

REHABILITATION

There are federal-provincial agreements under the Vocational Rehabilitation of Disabled Persons Act. These agreements specify that all facilities and services under the Act are to be available without discrimination

because of racial origin, religious views or political affiliation. "Colour" is considered to be implicit in "racial origin".

EQUAL PAY

Ontario was the first province to embody in a law the principle of equal pay for equal work; this province passed the Female Employees Fair Remuneration Act in 1951. Following this, seven more provinces adopted similar legislation, and the federal Female Employees Equal Pay Act was passed in 1956.

The provincial laws cover virtually all types of employment, whereas the federal Act applies to crown

companies and all works, undertakings or businesses under federal jurisdiction. Classified public servants are not covered by this Act; rather, the setting of pay scales by the government is based on job content, not on the sex of the person performing the work.

All of these acts contain provision for enforcement on lines similar to those contained in the FEP acts.

COLLECTIVE AGREEMENTS

Anti-discrimination provisions are also to be found in many collective agreements between employers and trade unions; Section 36 (b) of the Ontario Labour Relations Act states that a collective agreement will not be seen as such under the Act if it does discriminate against a person because of his race, creed, colour, nationality, ancestry or place of origin. A similar provision is contained in the British Columbia Labour Relations Act (Section 12 (8)), which forbids certifica-

tion of a union that discriminates contrary to the B.C. Fair Employment Practices Act. Any agreement entered into by such an association and an employer would be deemed not to be a collective agreement.

Wherever collective agreements possess a non-discrimination clause, the clause is subject to grievance procedure and might well arrive at the arbitration stage. In this event, the arbitrator has the legal power to reinstate the employee, and to order back pay to be made.

EDUCATION AND PUBLICITY

An important aspect of any anti-discrimination legislation is public awareness. Because of this, a wide range of publicity, promotional and educational measures are used by both federal and provincial governments and other bodies.

The Canada Department of Labour closely co-operates with a variety of employers' and workers' organizations and others to promote the most widespread acceptance and observance of "equal opportunity in employment". Department officials attend many regional, national and international meetings on discrimination, and carry on close liaison with the National Committee on Human Rights of the Canadian Labour Congress and other Human Rights Committees across the country.

There is also close co-operation with other federal and provincial agencies which administer human rights legislation.

The Fair Employment Practices Branch of the Canada Department of Labour promotes an educational publicity program to assist organizations and individuals,

and to make known to as wide an audience as possible the provisions contained in anti-discrimination legislation.

In addition to publishing a large range of booklets and pamphlets which are distributed throughout Canada and elsewhere, the Department designs and produces a quantity of posters outlining the provisions of the FEP Act, and regularly places educational advertisements in ethnic newspapers and employers' and workers' organization journals. Good use is made also of the radio and television media for educational purposes.

The Department also purchases and distributes to various organizations and provincial authorities a number of films dealing with human rights.

The most important result of all these methods is that more people are able to understand their rights, freedoms, privileges—and their obligations.

Complementing federal government measures are educational programs initiated by provincial governments: in Ontario, for example, an extremely active

educational program is being carried out under the Ontario Human Rights Commission—which also makes

funds available for university research into specific areas of inter-group relations.

OTHER LAWS

Further anti-discrimination laws are in effect concerning housing legislation and fair accommodation practices.

The national housing loan regulations make it a condition of every loan made by an approved lender and insured by Central Mortgage and Housing Corporation that the borrower will not discriminate against any person by reason of his race, colour, religion or national origin. The regulations also provide for a review by an independent arbitrator of any allegation of discrimination. Any merchant, builder or rental entrepreneur found guilty of practising such discrimination will be debarred for three years from obtaining further loans under the Act. A clause to this effect is contained in all National Housing Act mortgages.

Seven provinces have included fair accommodation

provisions in legislation: Ontario, Saskatchewan, New Brunswick, Nova Scotia, Manitoba, Alberta and British Columbia. They all stipulate that the facilities, accommodations and services of places which are customarily open to the public (hotels, restaurants, barber shops, theatres, etc.) must not be denied to anyone on the grounds of race, creed, colour, nationality, ancestry or place of origin. Both Ontario and Nova Scotia have amended their Fair Accommodation Practices legislation to include multiple dwellings as public accommodation.

In Quebec, Section 8 of the Hotels Act forbids refusal of lodging, food or other services, or other discrimination in hotels, restaurants or camping grounds, on the grounds of race, belief, colour, nationality, ethnic origin or place of birth.

INTERNATIONAL

United Nations

One of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

In December, 1966—eighteen years after the proclamation of the Universal Declaration of Human Rights—the General Assembly adopted three important international instruments: the Covenant on Economic, Social and Cultural Rights; the Covenant on Civil and Political Rights; and an Optional Protocol to the Covenant on Civil and Political Rights. Both Covenants recognize the right of peoples to self-determination, and have provisions barring all forms of discrimination in the enjoyment and exercise of human rights.

Any country ratifying the covenant on economic, social and cultural rights would acknowledge its responsibility to promote better living conditions for its people; it would recognize everyone's right to work, to

fair wages, to social security, to adequate standards of living and freedom from hunger, and to health and education. It would also undertake to ensure the right of everyone to form and join trade unions.

Basically, the covenants are designed to give effect, by means of the binding obligations of international treaties, to the principles embodied in the Universal Declaration. Canada voted for the adoption of all three instruments.

Because a substantial number of the provisions fall within provincial jurisdiction, the views of provincial governments have to be obtained, before signature and ratification by Canada.

The Commission on Human Rights, set up in 1946, was the body responsible for drafting the Universal Declaration, and these subsequent covenants.

The International Labour Organization

The General Conference of the International Labour Organization has pledged the continued co-operation

of the ILO with the United Nations in the promotion of universal respect for, and observance of, human rights and fundamental freedoms on the basis of the dignity and worth of the human person.

Canada has been a member state of the ILO since its inception in 1919, and in 1964 ratified Convention 111 which deals with Discrimination in Respect of Employment and Occupation, thus assuming an obligation to "declare and pursue" a national policy of non-discrimination.

International Association of Official Human Rights Agencies

The Canada Department of Labour is a member of the

Association—formed in 1967—an international group whose members consist of Canadian and American federal, provincial, state and local government agencies which administer enforceable laws prohibiting discrimination on the bases of race, colour, religion and national origin.

The Conference provides opportunity for an annual meeting of policy-making and administrative officials of statutory anti-discrimination agencies. Other purposes are to promote an exchange of information between member agencies, and to assist in planning and fostering co-operation, services, programs and actions among member agencies.

APPENDIX

Federal and Provincial Acts Bearing on Anti-Discrimination

FEDERAL LEGISLATION

- Canada Fair Employment Practices Act, 1953, c. 19.
- Unemployment Insurance Act, 1955, c. 50, s. 22.
- Female Employees Equal Pay Act, 1956, c. 38.
- Fair Wages Policy of the Government of Canada, 1954, P.C. 1954-2029.
- Canadian Bill of Rights, 1960, c. 44.
- Vocational Rehabilitation of Disabled Persons Act, 1960-61, c. 26.
- Public Service Employment Act, 1967.

PROVINCIAL LEGISLATION

- Alberta*—The Alberta Labour Act, Part VI, R.S.A., 1955, c. 157 as amended by 1957, c. 38, s. 41 (Equal Pay Legislation).
The Alberta Human Rights Act, 1966, c. 55.
- British Columbia*—Equal Pay Act, R.S.B.C., 1960, c. 131.
Fair Employment Practices Act, R.S.B.C., 1960, c. 137.
Labour Relations Act, R.S.B.C., 1960, c. 205, s. 12(8), as amended by 1961, c. 31.
Public Accommodation Practices Act, 1961, c. 50.

- Manitoba*—The Equal Pay Act, 1956, c. 18.

The Fair Employment Practices Act, R.S.M., 1954, c. 81, as amended by 1956, c. 20.

Fair Accommodation Practices Act, 1960, c. 14.

- New Brunswick*—Female Employees Fair Remuneration Act, 1960-61, c. 7.

Fair Employment Practices Act, 1956, c. 9.

Fair Accommodation Practices Act, 1959, c. 6.

- Nova Scotia*—Human Rights Act, 1963, c. 5.

(This is a codification of all previous Nova Scotia enactments on discrimination, namely the Fair Employment Practices Act, the Equal Pay Act, and the Fair Accommodation Act.)

- Ontario*—The Ontario Human Rights Code, 1961-62, c. 93, as amended by 1965, c. 85.

(This is a codification of all previous Ontario enactments on discrimination, namely, the Fair Employment Practices Act, the Female Employees' Fair Remuneration Act, the Fair Accommodation Act and the Ontario Human Rights Commission Act.)

- Prince Edward Island*—The Equal Pay Act, 1959, c. 11, as amended by 1962, c. 14.

Saskatchewan—The Equal Pay Act, R.S.S., 1965, c. 294.

The Fair Employment Practices Act, 1956, c. 69, as amended by 1959, c. 28.

The Saskatchewan Bill of Rights Act, R.S.S., 1953, c. 345, as amended by 1956, c. 67.

Fair Accommodation Practices Act, 1956, c. 68.

Quebec—The Hotels Act, 1963, s. 8(a) (b).

An Act Respecting Discrimination in Employment, 1964, c. 46.

ADDENDA

At time of going to press a number of provincial legislative items in the area of human rights were under discussion.

They were:

*A **Human Rights Act**, proposed for **New Brunswick**, which would consolidate the province's two existing anti-discrimination laws and extend the FEP Act to cover all employers, not only those with five or more employees. The Act would be administered by the New Brunswick Human Rights Commission, which would also develop educational programs;*

*The proposed establishment of a **Nova Scotia Human Rights Commission**, to co-ordinate government and private activity in the human rights field and to perform research, educational and information functions;*

*An **Amendment to the Ontario Human Rights Code**, to extend prohibitions against discriminatory hiring to include all employers (on the same lines as the New Brunswick Bill). In addition, the current provision prohibiting discriminatory rental practices in buildings with more than three self-contained dwelling units would be extended to cover any self-contained dwelling unit.*

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FAIR EMPLOYMENT PRACTICES BRANCH
CANADA DEPARTMENT OF LABOUR

